IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1229 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K C MANI

Versus

CENTRAL WEREHOUSING CORPN

Appearance:

MR KS JHAVERI for Petitioner

MR Prabhav A Mehta for respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/03/2001

ORAL JUDGEMENT

The petitioner above named has preferred this petition before this Court under Article 226 of the Constitution of India for appropriate writ, order or direction, directing the respondents to promote the petitioner to the post of Manager with immediate effect from 14.3.1990, the date on which his immediate junior was promoted to that post and also for further direction for releasing other consequential reliefs from time to time, which have been given to his immediate junior Mr S

S Khanna. The petitioner has come out with a case that the petitioner was initially appointed as Technical Assistant in 1961. Then he was working as Superintendent in the year 1968. At that point of time, he came across certain departmental proceedings and, therefore, he remained under suspension between 1968 and 1980. In the meantime he was directed to be placed under compulsory retirement on 30.1.1980. The petitioner preferred writ petition before the Hon'ble High Court of Andhra Pradesh, challenging the said orders of the respondent by writ petition No.5963/80. On 30.9.1986, the said writ petition was allowed, and the petitioner was directed to be reinstated but he was refused backwages. Therefore, the petitioner preferred appeal being Writ Appeal No.184/87. The respondent also preferred Appeal being Writ Appeal No.149/87. It seems that the appeal of the respondent failed whereas the petitioner succeeded in his appeal. It appears that the respondent preferred Special Leave Petition before the Supreme Court unsuccessfully. The only difference is that ultimately the petitioner was ordered to be reinstated with 75% backwages by the High Court and that order was modified by the Supreme Court, with consent of the petitioner. Now the petitioner says that one Mr S S Khanna junior to him was paromoted from the post of Superintendent and he also earned other promotion from time to time and ultimately Mr Khanna was promoted as Manager (General) with effect from 14.3.1990. It is the case of the petitioner that the petitioner was senior to Mr Khanna and, therefore, the petitioner should be promoted above Mr Khanna and with effect from the date on which Mr Khanna was promoted to that post. With this prayer the petitioner has come to this court.

2. On receiving the petition, rule was issued and Mr Prabhav Mehta, learned Advocate appears on behalf of the respondents in response to the service of rule. I have heard the learned Advocates for the parties and have perused the papers. The facts are not very much in dispute. The petitioner was appointed as Superintendent and in 1968, he was working as Superintendent on the Establishment of the respondents. This fact is not in dispute at all. Now the difficulty is that the petitioner claims promotion to the post of Manager (General) w.e.f. 14.3.1990, the date on which his immediate junior Mr Khanna was promoted to that post. It is not much in dispute that the post of Superintendent is comparatively a lower post. The next higher promotional post is that of Storate and Inspection Officer (General). There is further post of promotion known as Sr.Storate and Inspection Officer (General). The next promotion is that of Sr.Assistant Manager. Again there is post of

promotion as Dy.Manager (General). Then the next promotional post is that of Joint Manager (General) and this goes to the promotional post of Manager (General). This fact is totally undisputed. This would mean that the Superintendent will earn promotion to the Manager (General) post, provided he earns five intermediate promotions. It is not made known to the Court as to the date on which Mr Khanna, who is shown to be immediate junior to the petitioner in the seniority list in 1968, was first promoted to the post of Junior Storate Inspection Officer, which was the first promotion over the post of Superintendent. It is also not mentioned as to when Mr Khanna was given next promotion in the aforesaid hierarchy. This means that it is totally unknown to the court as to how the promotional avenues were made open to Mr Khanna. In that view of the matter, the petitioner cannot claim promotion to the post of Manager (General) when he was not promoted to the aforesaid five posts which are inter-linked between the post of Superintendent and the post of Manager (General). Therefore, there is no material to show as to when the petitioner was by-passed while promoting Mr Khanna to the post of Junior Storate and Inspection Officer (General). It is also not made known to the court as to when the petitioner was again by-passed from time to time when Mr Khanna was promoted to the aforesaid 5 posts. In that view of the matter, it cannot be said that Mr Khanna was junior to the petitioner when he last earned promotion to the post of Manager (General).

3. It is to be considered that Mr Khanna has earned all those six promotions but the dates are not known to the court. Moreover, those promotions have never been challenged either before the petition was filed or during the course of the pendency of this petition. The petitioner has not challenged the previous promotions of Mr Khanna as aforesaid, then it would be difficult to accept the argument that the petitioner should be promoted as Manager (General) which can be done only after crossing five intermediate cadres.

4. Then there is a question of fact that the petitioner has come out with a case that since he was under suspension between 1968 and 1980, his case for promotion was not at all considered. On the other hand, the respondents have made categorical statement in affidavit that the case of the petitioner was considered even when he was placed under suspension. This would be a disputed question of fact. This court in exercise of extra-ordinary constitutional jurisdiction, cannot sit as a court of appeal over the decisions recorded by the

respondent authorities. Same way, this court cannot decide the disputed questions of fact. As said above whether or not the case of the petitioner was considered by the respondent is again a question of fact in view of the rival contentions raised by the parties. As said above, the petitioner has said that his case was not considered between 1968 and 1980. The respondents have come out with a case that the case of the petitioner was objectively considered even when the petitioner was placed under suspension. In the aforesaid facts and circumstances as aforesaid, such a disputed question of fact cannot be considered in this writ petition. It is not possible for this court to hold that the petitioner's case was not considered by the respondents when Mr Khanna was promoted. These are the posts carrying promotion on the basis of merit. Therefore, when the case of the petitioner is not found to have been not considered then it goes without saying that when the case of the petitioner was considered and when comparative merits were assessed and when Mr Khanna was found more meritorious for being promoted, then that decision cannot be challenged in this petition, since it requires decision by this court on disputed question of fact. Apart from the above said position, when the disputed question of facts have arisen, it would not be possible for this court to hold that the case of the petitioner was not considered by the respondent. When this is the factual situation, the court cannot say that since the case of the petitioner was not considered, the petitioner is entitled to promotion. In the aforesaid view of the matter, I am of the decision that since disputed questions of fact have arisen in the present matter, it would not be possible to hold that because at the time when his junior was promoted, the case of the petitioner was not considered. Therefore, this petition deserves to be dismissed. This court cannot direct the respondents to promote the petitioner. The only order that can be passed by this court is to direct the authorities to consider the case of the petitioner. Here it is not proved that the case of the petitioner has not been considered. Therefore, there is no question of issuing any direction to the respondents to consider the case of the petitioner. However, it is made clear that in case the petitioner desires to make any representation to the respondents, he will certainly be at liberty to do so and it that is done, the respondents are naturally expected to dispose the same on merit. The respondent being a Corporation, will naturally decide the said representation according to law.

With these observations, this petition is dismissed.

Rule is discharged. No order as to costs.

2.3.2001   [D P Buch, J.]
msp